

RICHARD S. TALBERT

IBLA 82-498

Decided January 17, 1983

Appeal from decision of Montana State Office, Bureau of Land Management, rejecting simultaneous oil and gas lease application. M 51486.

Affirmed.

1. Oil and Gas Leases: Applications: Filing -- Oil and Gas Leases:
Applications: Sole Party in Interest

BLM may properly reject a simultaneous oil and gas lease application drawn with first priority where the applicant files the application and an attached statement setting forth the names of other parties in interest and the nature of the agreement between the parties, and the statement is not signed by the applicant, as required by 43 CFR 3102.2-7(b) (1981).

APPEARANCES: Ronald M. Johnson, Esq., Washington, D.C., for appellant.

OPINION BY ADMINISTRATIVE JUDGE BURSKI

Richard S. Talbert has appealed from a decision of the Montana State Office, Bureau of Land Management (BLM), dated January 13, 1982, rejecting his simultaneous oil and gas lease application, M 51486. Appellant's application was drawn with first priority for parcel MT 140 in the May 1981 simultaneous oil and gas lease drawing.

Appellant's application consisted of Form 3112-1 (July 1980), which states on the reverse side:

Other Parties in Interest - All other parties who own or hold any interest in this application, or the offer or lease which may result, must be named below (or on a separate attached statement). All such interested parties must furnish evidence of their qualifications within 15 days of the filing of this application. See 43 CFR 3102.2-7. [Emphasis italicized in original.]

The application was signed by appellant and dated May 14, 1981. The record indicates that attached to the application form, when submitted, was an additional document, signed by Danny Arnold, Roger St. Clair, and John W. Payne and dated May 14, 1981. The document states in part:

In compliance with the provisions of 43 CFR 3102.2-7, the undersigned individuals submit the following statement:

An oral agreement exists between each of the undersigned by which each will share alike in any expense as well as any benefit that is derived as a result of this offer to lease on a noncompetitive basis * * * [.]

In addition, the document attests to the qualifications of the other parties in interest.

In its January 1982 decision, BLM rejected appellant's application because appellant had failed to sign the attached statement, setting forth the nature of the agreement between appellant and the other parties in interest, as required by 43 CFR 3102.2-7(b). The applicable regulation, 43 CFR 3102.2-7(a), requires an applicant under the simultaneous oil and gas leasing program to set forth the names of other parties in interest on the application or on a separate accompanying sheet. In addition, 43 CFR 3102.2-7(b) provides in relevant part:

A statement, signed by both the offeror or applicant and the other parties in interest, setting forth the nature of any oral understanding between them, and a copy of any written agreement shall be filed with the proper Bureau of Land Management office not later than 15 days after the filing of the offer, or application if leasing is in accordance with Subpart 3112 of this title. 1/ [Emphasis added.]

In his statement of reasons for appeal, appellant contends that he has complied with 43 CFR 3102.2-7(b) because the application form and attached statement should be considered a "single document," citing generally accepted principles of law. Appellant states: "The document comprised of the application and attachment identifies all parties with an interest in the application, contains a description of the oral understanding between the four joint applicants, establishes their qualifications as applicants and compliance

1/ On Feb. 26, 1982, the Department published interim final regulations which revised 43 CFR Subpart 3102 eliminating the requirement to file the statement formerly required by 43 CFR 3102.2-7(b). 47 FR 8544 (Feb. 26, 1982). In the absence of countervailing public policy reasons or intervening rights, this Board may apply an amended version of a regulation to a pending matter where it benefits the affected party to do so. See James E. Strong, 45 IBLA 386 (1980); Wilfred Plomis, 34 IBLA 222, 228 (1978); Henry Offe, 64 I.D. 52, 55-56 (1957). In this case, however, it is not possible to do so because of the intervening rights of the second and third priority applicants.

with acreage limitations, and has been signed by all four parties" (Statement of Reasons at 4 (emphasis added)).

[1] We have previously considered the question of whether the separate statement required by 43 CFR 3102.2-7(b) must be signed by the applicant and the other parties in interest.

In Mildred A. Moss, 28 IBLA 364 (1977), which was affirmed by the Court of Appeals in Moss v. Andrus, Civ. No. 78-1050 (10th Cir. Sept. 20, 1978), we affirmed rejection of a first drawn oil and gas lease offer where the four other parties in interest filed the statement required by 43 CFR 3102.7, but the offeror filed no such statement. As such, we stated, "[t]here is no declaration by the offeror of what her interest is or what her agreements are with her four joint offerors." Mildred A. Moss, *supra* at 365. This deficiency was held to be fatally defective.

In the present case, an applicant is no longer required to set forth the "nature and extent of the interest of each [the offeror and the other parties in interest] in the offer," as formerly required by 43 CFR 3102.7 (1978). See F. C. Minkler III, 59 IBLA 203 (1981). Nevertheless, 43 CFR 3102.2-7(b) requires that an applicant set forth the "nature of any oral understanding between them." (Emphasis added.) Appellant has not complied with that requirement where the separate statement submitted with his application refers to an oral agreement "between each of the undersigned," and appellant did not sign that document. While the document indicates that the other parties in interest will "share alike in any expense as well as any benefit," and it might be presumed that appellant will share equally, BLM employees are not entitled "to guess at the meaning of ambiguous agreements." Mildred A. Moss, *supra* at 367. Moreover, it is quite possible to conclude from the application and the attachment that the actual nature of the understanding between appellant and the other parties in interest was that appellant would have a disproportionate share of any expenses and benefits and that the other parties in interest would share the remainder equally. Accordingly, where appellant did not sign the document attached to his application, we conclude that appellant did not set forth the nature of any oral understanding between all of the parties, in compliance with 43 CFR 3102.2-7(b). Appellant has simply not complied with the clear requirements of that regulation.

Appellant also argues that he relied on the fact that he has submitted similar applications with attached documents signed by other parties in interest "in 132 different drawings without any indication from a BLM office that * * * [the] applications failed to comply with BLM regulations" (Statement of Reasons at 2). Appellant, however, is not entitled to the invocation of equitable estoppel, under the standard enunciated in United States v. Georgia-Pacific, 421 F.2d 92 (9th Cir. 1970), in view of the unambiguous nature of 43 CFR 3102.2-7(b) and the fact that all persons dealing with the Government are charged with knowledge of duly promulgated regulations. Federal Crop Insurance Corp. v. Merrill, 332 U.S. 380 (1947). Moreover, 43 CFR 3112.6-1 clearly provides that rejection of an application, in part for a violation of 43 CFR Subpart 3102, is "an adjudicatory process which follows selection" (emphasis added), and thus, unless an application is drawn with

first priority BLM does not examine the application to determine whether an applicant has complied with the necessary requirements.

Finally, appellant argues that if we construe 43 CFR 3102.2-7(b) to require an applicant to sign the separate statement setting forth his agreement with other interested parties, even where the statement is attached to the application, that the rule should be given "prospective effect." Appellant states that, in deciding whether to apply the rule retroactively, the Board must weigh the harm to the applicant from retroactivity, *i.e.*, loss of his priority, against the possible frustration of the statutory purpose from prospectivity, under the standard enunciated in McDonald v. Watt, 653 F.2d 1035 (5th Cir. 1981). Appellant states that the statutory purpose behind 43 CFR 3102.2-7(b) would not be frustrated by applying the rule prospectively because appellant has fully disclosed the nature of any understanding or agreement between the four parties in interest. Furthermore, appellant states that this holding would promote the expeditious exploration for oil and gas. 2/

We do not agree, as noted above, that appellant fully disclosed the nature of the agreement between the parties. Accordingly, to apply the rule prospectively would be to frustrate the statutory purpose, as enunciated in the regulations, of full disclosure. In any case, we do not discern this case as presenting a question of whether to apply a rule prospectively, where the prior interpretation in Mildred A. Moss, *supra*, of an identical regulatory provision in 43 CFR 3102.7, has held that an applicant must sign the separate statement setting forth the nature of the agreement between the parties even where the statement is attached to the application. The question of prospectivity arises only in the context of application of a new rule or a departure from a well established practice. McDonald v. Watt, *supra*. This is not the case herein. Accordingly, we conclude that BLM properly rejected appellant's application. 3/

2/ In a supplemental statement of reasons, appellant argues that the fact that 43 CFR 3102.2-7(b) was subsequently repealed is an additional reason that the rule should be applied prospectively. We do not agree. The Board is not entitled to ignore duly promulgated regulations which were in effect at the time a simultaneous oil and gas lease application was filed. Altex Oil Corp., 61 IBLA 270 (1982). Whether an applicant can benefit from the subsequent repeal of a regulation is a separate question. See note 1.

3/ We are not unaware that a decision of this Board styled Elizabeth Pagedas, 38 IBLA 130 (1978), *aff'd*, On Reconsideration, 40 IBLA 21 (1979), involving a similar interpretation was itself reversed in Pagedas v. Andrus, Civ. No. 79-2456 (D.D.C. Jan. 22, 1981). In that case, Judge Parker, noting that plaintiff in that case had had applications with the same deficiency approved in the past, stated that "[t]he Department has identified no order, regulation or other form of statement disavowing this practice during the time period after the most recently approved lease and the time that plaintiff's lease application was submitted" (Memorandum Opinion at 7). Accordingly, Judge Parker, held that in the absence of notice by the Secretary that the Department would no longer accept applications completed in this way, rejection was arbitrary and capricious.

Pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

James L. Burski
Administrative Judge

We concur:

Gail M. Frazier
Administrative Judge

Bruce R. Harris
Administrative Judge

In contradistinction, we would point out that the Board's decisions in Mildred A. Moss, supra, and Elizabeth Pagedas, supra, had issued more than 2 years prior to the filing of appellant's application. Not only does the Board decide issues relating to oil and gas leasing with the authority of the Secretary, 43 CFR 4.1, but its decisions are indexed and published. Thus, under 5 U.S.C. § 552(a)(2) (1976), all persons are properly charged with knowledge of these precedents and appellant cannot claim ignorance.

